

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN McMURRY,

Petitioner,

v.

CASE NO. 06-12415
HONORABLE PATRICK J. DUGGAN

HUGH WOLFENBARGER,

Respondent.

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**OPINION AND ORDER (1) GRANTING RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT; (2) DENYING PETITIONER'S MOTION TO AMEND
HIS PETITION; AND (3) DENYING PETITIONER'S HABEAS PETITION**

At a session of said Court, held in the
U.S. District Courthouse, Eastern District
of Michigan on August 9, 2007.

PRESENT: HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On May 30, 2006, Petitioner, a state prisoner currently confined at the Muskegon Correctional Facility in Muskegon, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his March 1992 convictions of first degree murder and felony-firearm, pursuant to a jury trial in the Recorder's Court of the City of Detroit, Michigan. On December 5, 2006, Respondent filed a motion for summary judgment, contending that the petition is barred by the statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").

Petitioner thereafter filed a motion to amend his petition. This Court has referred the matter to Magistrate Judge Mona K. Majzoub for a report and recommendation.

Magistrate Judge Majzoub issued her Report and Recommendation (“R&R”) on May 30, 2007. In her R&R, Magistrate Judge Majzoub recommends that this Court grant Respondent’s motion for summary judgment and deny Petitioner’s application for a writ of habeas corpus. Magistrate Judge Majzoub concludes that the petition was filed beyond the AEDPA’s one-year statute of limitations and that Petitioner is not entitled to equitable tolling. She therefore recommends that this Court also deny Petitioner’s motion to amend his petition.

At the conclusion of her R&R, Magistrate Judge Majzoub informs the parties that they must file any objections to the R&R within ten days. After seeking and receiving an extension of time to file his objections, Petitioner filed objections on July 26, 2007. In his objections, Petitioner contends that the magistrate judge erred in concluding that there was no explanation for why he could not timely file his habeas petition without transcripts from his trial. Petitioner also contends that the magistrate judge erred in finding that his claim of actual innocence does not toll the limitations period.

The parts of the R&R to which objections are made will be reviewed by the Court *de novo*. See FED. R. CIV. P. 72(b); *Thomas v. Halter*, 131 F. Supp. 2d 942, 944 (E.D. Mich. 2001). The Court, however, “is not required to articulate all of the reasons it rejects a party’s objections.” *Halter*, 131 F. Supp. 2d at 944 (citations omitted). The Court finds no merit to Petitioner’s objections.

First, for the reasons Magistrate Judge Majzoub discussed in her R&R, the Court does not find that Petitioner was precluded from filing a timely habeas petition as a result of his inability to obtain his trial transcripts. Second, the Court agrees with Magistrate Judge Majzoub that Petitioner’s “newly discovered evidence” does not establish a credible claim of actual innocence. If Germaine Riley’s August 25, 1991 statements to police are believed, they do not suggest that Petitioner is innocent of the crimes for which he was convicted. Instead, Mr. Riley’s statements simply contradict the statements and trial testimony of Darrin Singer and therefore only present a possible attack on Mr. Singer’s credibility.

Based on the foregoing, the Court concludes that Petitioner’s habeas petition is barred by the AEDPA’s statute of limitations. Accordingly,

IT IS ORDERED, that Respondent’s motion for summary judgment is **GRANTED** and Petitioner’s petition for a writ of habeas corpus therefore is **DENIED**; **IT IS FURTHER ORDERED**, that Petitioner’s motion to amend his petition is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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